

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

William L. Leavell
Seattle, Washington 98818

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NAL/Acct. No. 915ST0003
Case No. 99ST10

FORFEITURE ORDER

Adopted: February 8, 2000

Released: February 9, 2000

By the Chief, Enforcement Bureau:

1. This order imposes a forfeiture against William L. Leavell, in the amount of \$2,000, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules ("the Rules"), 47 C.F.R. § 1.80, for willful violation of Section 303(n) of the Act, 47 U.S.C. § 303(n), and Section 95.426 of the Rules, 47 C.F.R. § 95.426, regarding refusal to allow an inspection of radio station equipment.

BACKGROUND

2. On November 2, 1998, agents of the Commission's Seattle Field Office investigated complaints that Mr. Leavell's Citizens Band ("CB") radio operations were causing widespread interference to telephones and home electronic devices in the area. Mr. Leavell was not on the air when the agents arrived in the neighborhood, but spoke with the agents when they knocked at the door, identified himself as the CB operator, and admitted to having CB radio equipment on the premises. However, when the agents asked to inspect the CB equipment, Mr. Leavell stated that he was ill and did not want to allow inspection at that time. The agents made arrangements to come back the next morning to inspect the station. On November 3, 1998, the agents found Mr. Leavell's CB equipment to be FCC type-accepted and installed in a correct manner. They informed Mr. Leavell that his station, as inspected on November 3, 1998, was in compliance with the CB rules, but that future complaints of severe interference would indicate that he had modified the equipment or added equipment to his station which does not comply with the FCC's CB rules for type-accepted devices. The Seattle Field Office subsequently sent Mr. Leavell a written warning letter, on November 4, 1998, describing the inspection findings and reminding him that operating with modified equipment or power amplifiers in the CB band would invalidate his operating authority for the CB radio. The letter also stated that operating non-FCC Type-Accepted CB equipment would be considered unlicensed operation in violation of Section 301 of the Act, and could subject him to penalties under Sections 501, 503 and/or 510 of the Act.

3. On December 17, 1998, agents from the Seattle Field Office conducted another investigation of Mr. Leavell's CB operations, in response to additional complaints from Mr. Leavell's neighbors. Based on their knowledge of CB radio systems, their engineering experience, and the power of the CB radio signal as received on the equipment in the agents' vehicle, the agents determined that the field strength of the signal transmitting from Mr. Leavell's station exceeded the expected level for an FCC Type-Accepted four watt CB transmitter. When questioned, Mr. Leavell admitted that he had been operating the CB radio at the time the

agents were monitoring, but he refused to allow the agents to inspect his transmitting system. Even upon being informed that refusal to allow an inspection of his CB equipment was punishable by fine, Mr. Leavell refused to allow the inspection as requested. On March 4, 1999, the Seattle Field Office issued a Notice of Apparent Liability ("NAL") in the amount of \$11,000, citing Mr. Leavell for operating a CB radio with excessive power and refusal to allow an inspection.

4. In his written response to the NAL, Mr. Leavell denies that he operated his CB radio with greater power than allowed by the Rules, and contends that he did not deny permission to inspect his equipment because the Rules do not require CB operators to provide immediate availability of the equipment. He further claims that the Commission is in violation of Federal law and proper procedure because: (1) he received no citation of the violation prior to imposition of the forfeiture; (2) he wasn't granted a personal interview with the Commission to discuss the violation; (3) he was denied a fact-finding hearing before the Commission or an administrative law judge; and (4) any forfeiture penalty issued against him cannot exceed \$10,000.

DISCUSSION

5. By operating a CB radio station, Mr. Leavell is responsible for knowledge of, and compliance with, the applicable sections of the Rules. *See* 47 C.F.R. § 95.402. As noted in the NAL, section 95.426 of the Rules requires a CB radio operator to make his/her CB station and the station's records available for inspection by an authorized FCC representative. 47 C.F.R. § 95.426; *see also* 47 U.S.C. § 303(n). The right to inspect a station is one of the cornerstones of the Commission's ability to ensure compliance with the Act and the Rules. *See Norfolk Southern Railway Company*, 11 FCC Rcd 519 (1996). A refusal to allow or a significant delay in inspection can often shelter egregious violations and is thus can frustrate enforcement efforts. *Id.* Hence, the FCC is not required to inspect by appointment. Mr. Leavell refused to allow properly identified FCC agents to inspect his radio station when requested, in violation of both the Act and the Rules. His refusal to allow the inspection effectively prevented the Commission from verifying his claim that he was not operating above the power limits established in the Rules when the agents detected non-compliant, higher signal levels on December 17, 1998.

6. Although we reject the procedural arguments raised by Mr. Leavell as noted below, under all the circumstances here, we believe it is appropriate to lower the amount of this forfeiture to \$2,000. With regard to the procedural claims, we note that Section 503(b)(5) of the Act, 47 U.S.C. § 503(b)(5), provides that a warning must be given initially to a party who is not a licensee unless the party is engaged in activities for which a license or some form of Commission authorization is required.¹ Although CB operators are not required to have individual licenses, they operate under the authority granted by section 95.404 of the Rules, 47 C.F.R. § 95.404. Because Mr. Leavell operates under section 95.404, which is effectively a blanket license to CB operators, the Commission was not required to send him a citation prior to assessing a forfeiture, or to grant him an opportunity for a personal interview.² Similarly, Mr. Leavell is not entitled to a "fact-finding hearing" as a matter of right, because section 503(b)(3)(A) of the Act explicitly states that such hearings may be held *at the discretion of the Commission*. 47 U.S.C. § 503(b)(3)(A). We also note that the Commission has authority to impose forfeitures of up to \$11,000

¹ The Administrative Procedure Act defines a license as including "the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission." *See* 5 U.S.C. § 551(8).

² In the instant case, however, the Commission did warn Mr. Leavell about his operation before issuing the NAL, both verbally, on November 3, 1998 and December 17, 1998, and in writing, on November 4, 1998.

per day, per violation.³ Nonetheless, we do recognize that Mr. Leavell may have misunderstood his obligations to allow inspection. Taking into account all the factors required under 47 U.S.C. §503(b)(2)(D), we find that the proposed forfeiture should be reduced to \$2,000.

ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, 47 C.F.R. § 1.80, William L. Leavell **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,000 for violation of Section 303(n) of the Act and Section 95.426 of the Rules.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80(f) of the Rules, William L. Leavell shall, within thirty (30) days of the release of this Forfeiture Order, pay the full amount of the forfeiture. Forfeitures shall be paid by check, credit card, or money order payable to the Federal Communications Commission.⁴ The remittance should be marked "NAL/Acct. No. 915ST0003" and mailed to the following address:

Federal Communications Commission
Post Office Box 73482
Chicago, IL 60673-7482

Petitions for reconsideration pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Rules, 47 C.F.R. § 1.115, should be sent to:

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
ATTN: Technical & Public Safety Division
Enforcement Bureau

Forfeiture penalties not paid within 30 days will be referred to the U.S. Attorney for recovery in a civil suit. *See* 47 U.S.C. § 504(a).

³ 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

⁴ Requests for payment under installment plans should be mailed to: Chief, Credit & Debt Management Center, Mail Stop 1110A2, 445 12th Street, S.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Rules, 47 C.F.R. § 1.1914. Contact Chief, Credit & Debt Management Center, at (202) 418-1995 for more information on payments by credit card.

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent certified mail, return receipt requested, to William L. Leavell, in care of his counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau